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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 UNITED STATES OF AMERICA,

15
16 Plaintiff,

17 v.

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19 RONALD CRAIG ILG,

20
21 Defendant.

Case No. 2:21-cr-00049-WFN

**REPLY IN SUPPORT OF
DEFENDANT’S MOTION TO
SUPPRESS EVIDENCE
DERIVATIVE OF COINBASE
SEARCH WARRANT**

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23 The Coinbase Search Warrant was issued absent probable cause as the
24 “copied-and-pasted” alleged dark web messages do not provide adequate
25 reliability regarding the BBC’s anonymous source and the FBI failed to
26 adequately corroborate the alleged messages via predicted future activity. *See*
27 *United States v. Luong*, 470 F.3d 898, 903 (9th Cir. 2006) (information provided
28 by anonymous source “must predict future actions by the suspect that are
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subsequently corroborated by the police”). As such, all evidence derivative of the Coinbase Search Warrant must be suppressed as fruit of the poisonous tree and a contemporaneously issued grand jury subpoena may not be used as “an insurance policy.” *Ctr. Art Galleries-Hawaii, Inc. v. United States*, 875 F.2d 747, 755 (9th Cir. 1989), *superseded by statute on other grounds as recognized in J.B. Manning Corp. v. United States*, 86 F.3d 926, 927 (9th Cir. 1996).

A. The Coinbase Search Warrant Was Issued Absent Probable Cause.

Under the Fourth Amendment, “[a]n anonymous tip, without more, does not constitute probable cause.” *United States v. Mendonsa*, 989 F.2d 366, 368 (9th Cir. 1993). This is so because “an anonymous tipster cannot be held accountable if he or she provides inaccurate information, and the police cannot assess the tipster's reputation.” *United States v. Morales*, 252 F.3d 1070, 1074 (9th Cir. 2001); *accord United States v. Clark*, 31 F.3d 831, 834 (9th Cir. 1994) (“hearsay from an unknown informant is highly suspect”).

To establish probable cause, an anonymous source “must predict future actions by the suspect that are subsequently corroborated by the police.” *Luong*, 470 F.3d at 903. Adequate corroboration is necessary to show “a sufficient level of reliability and basis of knowledge for the tip.” *United States v. Bishop*, 264 F.3d 919, 924 (9th Cir. 2001). Although probable cause is based upon the

1 totality of the circumstances, corroboration of future actions by the suspect is
 2 required when the source is completely unknown to law enforcement. *See*
 3 *Illinois v. Gates*, 462 U.S. 213, 245 (1983) (“the anonymous letter contained a
 4 range of details relating not just to easily obtained facts and conditions existing
 5 at the time of the tip, but to future actions of third parties ordinarily not easily
 6 predicted”); *United States v. Crawford*, 943 F.3d 297, 306 (6th Cir. 2019).

11 Pursuant to the Search Warrant Application, the dark web messages were
 12 provided by an unknown source, to the BBC, and then to the FBI. (*See* ECF No.
 13 98-1 at 15-16.) Multiple times in the Application, the FBI refers to the source of
 14 the messages as “a source and/or sources unknown to the FBI.” (*Id.* at 16.)¹
 15 The FBI never made contact with the unknown source. (*See id.*) Furthermore,
 16 at no point during the investigation did the FBI direct correspondence with
 17 “Scar215,” attempt to surveil Dr. Ilg, or otherwise seek predictive movement or
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 24 ¹ A footnote to the Application provides: “This BBC group, utilizing the same
 25 source, identified an earlier murder-for hire plot that resulted in the FBI arrest of
 26 a woman in Milwaukee, Wisconsin for attempting to kill her husband via dark
 27 web murder-for-hire services.” (ECF No. 98-1 at 16 n. 7.) However, a
 28 confidential informant’s track record must be proven to law enforcement, not
 29 based upon hearsay statements from a third party to law enforcement. *See, e.g.,*
 30 *United States v. Jeffers*, 621 F.2d 221, 226 (5th Cir. 1980) (“It is sufficient that
 31 the affiant received his information regarding the informant’s reliability from
 32 [another law enforcement agency].”).

actions. Instead, the FBI “corroborated” Dr. Ilg’s involvement with information obtained from Dr. Ilg’s estranged wife (Victim 2), who was “currently engaged in contentious divorce proceedings” and “uncomfortable” with Dr. Ilg’s involvement with another woman. (ECF No. 98-1 at 33-34.)

FBI Agent Barker identified the following attempted “corroboration”:

Type / Date	Application Classification	Deficiency
Family and Pets—After Tip	“During my investigation, I interviewed VICTIM 2, who confirmed that she has a dog and her father lives in the Spokane area.” (ECF No. 98-1 at 20.)	“Mere confirmation of innocent static details in an anonymous tip does not constitute corroboration.” <i>Clark</i> , 31 F.3d at 834-35.
Schedule—After Tip	“VICTIM 2 does work part time at Spa Blue and works evenings on weeks that she does not have her kids. VICTIM 2 and Subject transfer custody of their child every Friday afternoon.” (ECF No. 98-1 at 24.)	Not only was Victim 2’s work schedule ascertainable online, but the parties’ temporary parenting plan was publicly available from the Spokane County Superior Court. (<i>See</i> Wagley Reply Decl., Ex. F.)
Text Message—On or Before 2/16/21	Witness 1 allegedly indicated “you hired someone to hurt [Victim 2] from the dark web using bitcoin stop now” and Dr. Ilg responded “I absolutely did not hire anyone.” (ECF No. 98-1 at 33.)	Nowhere does the Application indicate Witness 1’s alleged basis of knowledge (<i>i.e.</i> , statements from Dr. Ilg, hearsay from a third-party, observing the alleged messages).

Text Message— Undated	Dr. Ilg allegedly discusses in text message to nanny “a kidnapping scenario. Something many women . . . fantasize about.” (ECF No. 98-1 at 34.)	However, these messages are clearly discussing a sexual fantasy and the nanny’s response is “I’ve never been the one to take part in any kind of threesome or role play with another couple haha . . . If it were between a boyfriend maybe that would be different. Lol.” (<i>Id.</i>)
Text Message— 4/8/21	Witness 1 texted Victim 2: “strange stuff has happened while we have been here. . . . I need to talk to you asap when we get back.” (ECF No. 98-1 at 35.)	This text message provides no information whatsoever regarding what is the “strange stuff” and does not refer to Dr. Ilg.

In totality, the anonymous tip and “messages” came from a news source— with a clear motive to fabricate a sensationalized story for a podcast—and was corroborated by either innocuous public details or vague information provided by Dr. Ilg’s estranged wife. The suspicious nature of the “copied-and-pasted,” unauthenticated messages is telling by virtue of the “Notes” on page 1 of Exhibit 1 to the Application. (*See* ECF No. 98-1 at 38.) These “Notes” contain publicly available internet links (*i.e.*, Zillow, LinkedIn, etc.) relating to the alleged victims, as well as a “Connection?” section indicating:

Connection?

There is a 'Dr. Ron C. Ilg' who is a neonatologist who might connect the two

<https://health.usnews.com/doctors/ron-ilg-310690>

(*Id.*) This information linking Dr. Ilg to the alleged dark web messages is only comprised of publicly available information from the internet.

The crux of the Government's Response is that "[t]he FBI was able to corroborate much of the information in the dark web messages, including Defendant's motive, and his animosity toward both victims." (ECF No. 106 at 2.) First, the FBI's attempted corroboration did not involve requisite future actions of Dr. Ilg as predicted by the unknown informant. *See, e.g., Luong*, 470 F.3d at 903. Second, a suspect's alleged motive and/or animosity is insufficient for probable cause as it is inherently subjective. *See United States v. Johnson*, 256 F.3d 895, 905 (9th Cir. 2001) ("hunches' are insufficient to establish reasonable suspicion, let alone probable cause."). Third, to the extent the Government argues that corroboration exists by virtue of the nature of the messages and cryptocurrency payments, such information was provided by the untested anonymous source(s), thereby requiring predictive corroboration to implicate Dr. Ilg as the suspect.

1 The Government further argues that future corroboration should not be
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 3 required as “by the time [the] tip was made known to the FBI, the Defendant
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 5 already had largely completed the crime—attempted kidnapping.” (ECF No.
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 7 106 at 11.) In support of this argument, the Government cites to clearly
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 9 distinguishable cases addressing the lower standard of reasonable suspicion for a
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 11 *Terry*² stop. *United States v. Wheat*, 278 F.3d 722, 726 (8th Cir. 2001)
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 13 (“Because reasonable suspicion is a less demanding standard . . . it can arise
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 15 from information that is less reliable than that required to show probable cause,
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 17 including an anonymous tip.”); *accord United States v. Anderson*, 2012 WL
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 19 330969, at *5 (N.D. Cal. 2012). Furthermore, in both cases, the anonymous tip
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 21 did not involve clandestine operations—such as the dark web—and involved
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 23 citizen informants. *See Wheat*, 278 F.3d at 734 (“Unlike with clandestine
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 25 crimes such as possessory offenses, including those involving drugs or guns,
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 27 where corroboration of the predictive elements of a tip may be the only means of
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 29 ascertaining the informant’s basis of knowledge, in erratic driving cases the
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 31 basis of the tipster’s knowledge is likely to be apparent.”); *accord Anderson*,
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 2012 WL 330969, at *5 (“the tip at issue was not that Defendant was about to
 commit a crime; rather, it was that Defendant had committed a crime against the

² *Terry v. Ohio*, 392 U.S. 1 (1968).

1 tipster here”). On the other hand, the Application at issue referred to an alleged
 2 kidnapping and assault that had yet to occur. (*See* ECF No. 98-1).
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4 Various times in its Response, the Government cites to alleged facts
 5 outside of the Application to establish probable cause. For example, the
 6 Government argues that after the Coinbase Search Warrant was issued, “the FBI
 7 recovered the username and password for the dark website inside Defendant’s
 8 biometric safe.” (ECF No. 106 at 3.) Similarly, the Government cites to six
 9 federal cases and indicates “this source has provided information leading to
 10 criminal charges against other suspects who attempted to hire dark web hitmen.”
 11 (*Id.* at 13.) However, none of this alleged extrinsic information may be used to
 12 support the Coinbase Search Warrant as “[a]ll data necessary to show probable
 13 cause for the issuance of a search warrant must be contained within the four
 14 corners of a written affidavit given under oath.” *Luong*, 470 F.3d at 904.
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23 **B. The Good Faith Exception to the Exclusionary Rule is Inapplicable.**
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25 In the alternative, the Government argues that even if the Coinbase Search
 26 Warrant were invalid, “the executing officers acted in good faith.” (ECF No.
 27 106 at 15.) However, the “good faith” exception does not apply: (1) “when the
 28 affiant knowingly or recklessly misleads the judge with false information,” or
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1 (2) “when the affidavit is so lacking in indicia of probable cause that official
2 belief in its existence is objectively unreasonable.” *Luong*, 470 F.3d at 902.

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4 First, the FBI knowingly and/or recklessly mislead the judge with false
5 information within the Application. In this vein, Agent Barker states that the
6 source(s) provided information “that resulted in the FBI arrest of a woman in
7 Milwaukee” and “[t]he FBI is unaware of any incident in which the source has
8 failed to provide accurate information,” while acknowledging the “source and/or
9 sources [are] unknown to the FBI.” (ECF No. 98-1 at 16 n. 7.) Additionally,
10 the Application indicates that Dr. Ilg “approached their nanny with a
11 ‘kidnapping scenario,’” but fails to indicate that these messages were extremely
12 stale and from “March to July of 2018.” (See Wagley Decl., Ex. G.) Other facts
13 will be established fully at the upcoming evidentiary hearing.
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16 Second, the Application was so lacking in probable cause that the FBI
17 could not objectively believe it had authority to execute the Coinbase Search
18 Warrant. The Ninth Circuit requires “binding appellate precedent” authorizing
19 the search, and it is not enough for the issue to be “‘unclear’ or for the
20 government’s position to be ‘plausibly . . . permissible.’” *United States v. Cano*,
21 934 F.3d 1002, 1021 (9th Cir. 2019). As indicated *supra*, the unverified tip is
22 the “lynchpin” of the Application and insufficient. See *Luong*, 470 F.3d at 903.
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1 Third, during the execution of another Search Warrant as part of the
 2 investigation, the FBI photographed clearly attorney-client privileged documents
 3 from Dr. Ilg's residence. (*See* Wagley Decl., Ex. H.) The Government has
 4 failed to come close to establishing the application of the "good faith"
 5 exception. *See United States v. Underwood*, 725 F.3d 1076, 1085 (9th Cir.
 6 2013) ("The burden of demonstrating good faith rests with the government.").

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 11 **C. The Inevitable Discovery Doctrine is Inapplicable.**

12 Finally, the Government argues that the inevitable discovery doctrine
 13 applies as it "independently obtained the records through the search warrant by
 14 other legal process, specifically through a grand jury subpoena." (ECF No. 106
 15 at 16.) Pursuant to the inevitable discovery doctrine, "evidence which has been
 16 illegally obtained will not be suppressed if 'the government can prove that the
 17 evidence would have been obtained inevitably.'" *Ctr. Art Galleries-Hawaii*,
 18 875 F.2d at 754. However, the inevitable discovery doctrine does not allow the
 19 "use of a subpoena served at the time of an illegal search as 'an insurance
 20 policy' to protect against suppression motions." *Id.* at 755. In this vein, "[a]
 21 subpoena can be invalid for a variety of reasons, as when it is unduly
 22 burdensome, when it violates the right against self incrimination, or when it calls
 23 for privileged documents.'" *Id.* Furthermore, application of the inevitable

1 discovery doctrine predicated upon the issuance of a subpoena “would allow the
2 government to violate the Fourth Amendment with impunity as long as they
3 could obtain a subpoena.” *In re Motion for Return of Prop. Pursuant to Rule 41,*
4 *Fed. Rules of Criminal Procedure*, 681 F. Supp. 677, 687 (D. Haw. 1988).
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8 Here, the Government is unable to rely upon a grand jury subpoena, issued
9 contemporaneously with the invalid Coinbase Search Warrant, as “an insurance
10 policy.” *See United States v. Eng*, 971 F.2d 854, 860 (2d Cir. 1992) (“Particular
11 care is appropriate where . . . subpoenas are issued after or at the time of the
12 unlawful search.”). In this vein, the return of the subpoena and Coinbase Search
13 Warrant were inextricably intertwined. As such, it is impossible to ascertain
14 whether Coinbase was only responding to the Search Warrant and if the entity
15 would have responded to the subpoena on its own. The Government has failed
16 to carry its burden regarding the inevitable discovery doctrine. *See In re 650*
17 *Fifth Ave. & Related Properties*, 830 F.3d 66, 102 (2d Cir. 2016) (“the burden is
18 on the Government to prove that each event leading to the discovery of the
19 evidence would have occurred with a sufficiently high degree of confidence for
20 the district judge to conclude, by a preponderance of the evidence, that the
21 evidence would inevitably have been discovered.”).
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CONCLUSION

Based upon the foregoing, the Defendant respectfully requests that the Court suppress any and all evidence derivative of the Coinbase Search Warrant.

RESPECTFULLY SUBMITTED this 2nd day of June, 2022.

ETTER, McMAHON, LAMBERSON,
VAN WERT & ORESKOVICH, P.C.

By: /s/ Andrew M. Wagley

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Attorneys for Ronald C. Ilg, MD

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all attorneys of record in this matter.

EXECUTED in Spokane, Washington this 2nd day of June, 2022.

By: /s/ Andrew M. Wagley
Andrew M. Wagley